

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION**

| | | |
|---|---|---|
| CHARLES MORROW, <i>et al.</i> |) | |
| |) | |
| Plaintiffs, |) | CIVIL ACTION NO: 3:07-CV-617-MHT |
| |) | |
| v. |) | |
| |) | |
| FLOWERS FOODS, INC., <i>et al.</i> |) | |
| |) | |
| Defendants. |) | |

DEFENDANT FLOWERS BAKING CO. OF OPELIKA, LLC'S
MOTION TO COMPEL PRODUCTION OF DOCUMENTS

COMES NOW Defendant Flowers Baking Co. of Opelika, LLC ("Flowers/Opelika"), by and through its undersigned counsel, and respectfully submits this Motion to Compel Production of Documents ("Motion to Compel").

1. Plaintiffs, including Plaintiffs Small and Murphy, brought this action under Section 216(b) of the Fair Labor Standards Act ("FLSA"), on behalf of a nationwide class, alleging that Defendants failed to pay them overtime for hours worked over 40 in a week in violation of the FLSA. (Ct. Doc. Nos. 1; 39; 54). Central to the allegations in Plaintiffs' Complaint is that they were/are (non-exempt) employees, and not independent contractors, with Flowers/Opelika.

2. On December 11, 2007, Flowers/Opelika served each Plaintiff, including Plaintiffs Small and Murphy, with First Requests for Production of Documents ("Document Requests"), requesting documents directly relevant to Plaintiffs' individual claims. Defendant's Document Requests sought (in pertinent part) documents which Plaintiffs would need to obtain to comply with their federal and state tax reporting obligations, and documents which Plaintiffs receive(d) on a daily or weekly basis.

3. Despite these clear and narrowly tailored Document Requests, Plaintiffs Small and Murphy have failed to produce any tax returns for any years during which they were/are independent distributors with Flowers/Opelika. Plaintiff Small has also failed to produce any documents whatsoever pertaining to his five year distributorship with Flowers/Opelika.

4. Pursuant to Federal Rule of Civil Procedure 37(a)(1), Defendant attempted to confer with Plaintiffs Small and Murphy on multiple occasions in a good faith effort to secure the documents requested in Defendant's Document Requests and resolve the issues raised in this Motion without court intervention.

5. Despite Defendant's repeated attempts, Plaintiffs Small and Murphy have still failed to produce the documents subject to this Motion.

6. Defendant Flowers/Opelika thus asks this Court to compel Plaintiffs Murphy and Small to produce responsive documents, as outlined and limited in Defendant's Memorandum in Support of Motion to Compel filed herewith.

WHEREFORE, Defendant respectfully requests that this Honorable Court GRANT its Motion to Compel the Production of Documents, as set forth in the brief filed herewith.

Respectfully submitted this 6th day of May, 2008.

/s/ Kevin P. Hishta

Kevin P. Hishta

Georgia Bar No. 357410

Admitted *Pro Hac Vice*

OGLETREE, DEAKINS, NASH,

SMOAK & STEWART, P.C.

Bank of America Plaza

600 Peachtree Street, NE

Suite 2100

Atlanta, GA 30308

E-mail: Kevin.Hishta@ogletreedeakins.com

(404) 881-1300

(404) 870-1732 Fax

Sandra B. Reiss
Alabama Bar No. ASB-3650-S80S
OGLETREE, DEAKINS, NASH,
SMOAK & STEWART, P.C.
One Federal Place, Suite 1000
1819 Fifth Avenue North
Birmingham, Alabama 35203-2118
e-mail: Sandra.Reiss@odnss.com
Ph. (205) 328-1900
Fax: (205) 328-6000

*Counsel for Defendant Flowers Baking Co. of Opelika,
LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this the 6th day of May, 2008, I electronically filed the foregoing Defendant Flowers Baking Co. of Opelika, LLC's Motion to Compel the Production of Documents with the Clerk of the Court using the CM/ECF system which will send notification of such filing to:

Greg L. Davis, Esq.
The Law Offices of Greg L. Davis
6987 Halcyon Park Drive
Montgomery, AL 36117

Joe R. Whatley, Jr., Esq.
Whatley Drake & Kallas, LLC
2001 Park Place North
Suite 1000
Birmingham, Alabama 35203

Joseph P. Guglielmo, Esq.
Whatley Drake & Kallas, LLC
1540 Broadway, 37th Floor
New York, New York 10036

Amy Lynne Weaver
Whatley Drake & Kallas, LLC
2001 Park Place North
Suite 1000
Birmingham, Alabama 35203

Glen M. Connor
Whatley Drake & Kallas, LLC
2001 Park Place North
Suite 1000
Birmingham, Alabama 35203

E. Kirk Wood, Esq.
Wood Law Firm, LLC
PO Box 382434
Birmingham, Alabama 35238-2434

/s/ Kevin P. Hishta
Kevin P. Hishta